seem to accrue under the contract. See *So. Ry.* v. *Prescott, supra*, 639. In the instant case the shipper had started but not completed the act of assuming control; the stock remained in the car and was not out of the carrier's possession. See *Young* v. *Hichens*, 6 Q. B. 606. The claim did then accrue under the contract, and the shipper's failure to give notice afforded the carrier a good defense. It would seem that the question of termination of transportation as discussed in authorities relative to the change from carrier's to warehouseman's liability, a question to which the court directed much attention, was immaterial.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — CONTROL BY STATES — INTERSTATE BRIDGES. — The plaintiff built a bridge across the Ohio River between West Virginia and Ohio under a contract with the defendant, part of the consideration for his work being a "free pass over and across said bridge perpetually." A West Virginia statute, enacted later, made it unlawful for a public service corporation to receive from any person a greater or less compensation for any service than it received from any other person. The plaintiff seeks an injunction to restrain the defendant from requiring him to pay toll when crossing the bridge: (1) from the West Virginia shore; (2) from the Ohio shore. *Held*, that the bill be dismissed. *Schrader* v. *Steubenville, East Liverpool & B. V. T. Co.*, 99 S. E. 207 (W. Va.).

For a discussion of this case, see NOTES, p. 292, *supra*.

CONSTITUTIONAL LAW — MAKING AND CHANGING CONSTITUTIONS — FEDERAL AMENDMENTS — STATE REFERENDUM. — A mandumus was sought to compel the Secretary of State of the state of Washington to submit to the people the proposed Eighteenth (Prohibition) Amendment to the Federal Constitution which had already been ratified by joint resolution of the Washington legislature. An amendment to the state Constitution provided that "all acts, bills or laws" passed by the legislature should be subject to review by the electors on proper petition. The lower court ordered the writ to issue. *Held*, that this was proper. *State* v. *Howell*, 181 Pac. 920 (Wash.).

A similar mandamus was sought under the provisions of the Oregon Constitution which reserve to the people "power at their own option to approve or reject at the polls any act of the legislative assembly." *Held*, that the writ of mandamus should not issue. *Herbring* v. *Brown*, 180 Pac. 328 (Ore.).

For a discussion of these cases, see NOTES, p. 287, *supra*.

CONSTITUTIONAL LAW — TREATY-MAKING POWER — FEDERAL MIGRATORY BIRD ACTS. — After the federal Migratory Birds Act of March 4, 1913, had been declared unconstitutional as an exercise by the federal government of power reserved to the states, the federal government made a treaty with Great Britain on behalf of Canada to protect birds migrating between the United States and Canada. On July 3, 1918, Congress passed a second Migratory Birds Act, of substantially the same character as the unconstitutional Act of 1913, except that it was framed expressly to carry out the British treaty. *Held*, that the act of 1918 is constitutional. *United States* v. *Thompson*, 258 Fed. 257; *United States* v. *Samples*, 258 Fed. 479; *United States* v. *Selkirk*, 258 Fed. 775.

For a discussion of these cases, see NOTES, p. 281, *supra*.

CONTRACTS — CONSTRUCTION OF CONTRACTS — CONTRACT TO PERFORM TO SATISFACTION OF OTHER PARTY. — The plaintiff contracted to do the tile work on the defendant's new house. The contract provided that the "work must be satisfactory to the owner." The trial court found that the job was done in a workmanlike manner and was "reasonably satisfactory," though not "satis-

factory to the defendant." *Held*, that the condition was fulfilled. *Bruner* v. *Hegyi*, 183 Pac. 369 (Cal.).

If one party contracts to perform to the personal satisfaction of the other, there is a valid contract for sufficient consideration. See *Brown* v. *Foster*, 113 Mass. 136; *Andrews* v. *Belfield*, 2 C. B. (N. S.) 779. In cases where the satisfactory character of the services or finished article is determined by feelings, taste, or sensibility, it is more natural to conclude that personal satisfaction of the party — nothing less — is meant. *Zaleski* v. *Clark*, 44 Conn. 218; *Gibson* v. *Cranage*, 39 Mich. 49. And the courts do not seek to avoid this meaning in the case of a sale where, upon the buyer's dissatisfaction, the article can be returned and the *status quo* restored. *McClure* v. *Briggs*, 58 Vt. 82; *Printing Press Co.* v. *Thorp*, 36 Fed. 414. But such an interpretation, when it would work hardship, as where the work is performed on another's land or chattel, will not be adopted, unless clear language requires it. The courts prefer to hold that a reasonable satisfaction was intended, and often look to other descriptions of the work in the contract to reach this conclusion. *Hawkins* v. *Graham*, 149 Mass. 284, 21 N. E. 312; *Erickson* v. *Ward*, 266 Ill. 259, 107 N. E. 593. However, the New York courts have gone further, and have held that reasonable satisfaction was sufficient to fulfill the promise, even in cases where the language of the parties pointed clearly the other way. *Duplex Safety Boiler Co.* v. *Garden*, 101 N. Y. 387, 4 N. E. 749; *Russel* v. *Allerton*, 108 N. Y. 288, 15 N. E. 391. This seems an unjustifiable making over of the contract of the parties, brought about by a distaste for enforcing, even at law, a hard bargain. The principal case seems to fall into this category.

CONTRACTS — DEFENSE OF IMPOSSIBILITY — DAMAGES FOR BREACH OF AN IMPOSSIBLE CONTRACT. — The plaintiff desired to send money to her bank in time to pay off a mortgage. With knowledge of the evident difficulty, the defendants promised to wire the money in time. Delivery of the telegram in time was admitted to be impossible and was not made. The plaintiff sued for the loss caused by the defendants' failure to pay off the mortgage. *Held*, that the plaintiff could not recover. *McMahon* v. *Western Union Telegraph Co.*, 171 N. W. 700 (Iowa).

Impossibility, apart from certain exceptional classes of cases, is not a defense to a breach of contract. See 19 HARV. L. REV. 462. The court did not aver that impossibility was a defense, but held that the defendants were not liable for the plaintiff's loss on the ground that it was not caused by the defendants' breach, because, payment in time being impossible, the loss had already occurred before the contract was made. This argument would set up a defense in substance, if not in form, in practically every case of impossibility. But the court seems to have overlooked two fundamental principles of the law of contracts. Parties may bind themselves to liability for non-performance of any legal contract, even though impossible of fulfillment, if such intention is clearly expressed as here. *Berg* v. *Erickson*, 234 Fed. 817; *Reid* v. *Alaska Packing Co.*, 43 Ore. 429, 73 Pac. 337. And the usual measure of damages for breach of contract is what would place the plaintiff in the same position he would have been in if the contract had been performed. *Wall* v. *City of London Real Property Co.*, L. R. 9 Q. B. 249. See 1 SEDGWICK ON DAMAGES, 9 ed., § 30; 2 SEDGWICK, § 609.

CONTRIBUTORY NEGLIGENCE — IMPUTED NEGLIGENCE — HUSBAND'S NEGLIGENCE NOT IMPUTED TO WIFE. — The plaintiff was injured in a collision between a street car and an automobile in which she was a passenger. The collision was the result of the negligence of both the motorman and her husband who drove the automobile. The plaintiff herself exercised due care. She brought suit under a statute giving a married woman the right to sue in her own name